

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

77-1472

**United States Court of Appeals
For the Second Circuit**

UNITED STATES OF AMERICA,

Appellee,

-against-

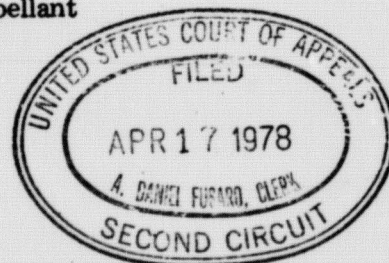
HAROLD WOODFORD,

Appellant.

*On Appeal From the United States District Court
For The Southern District of New York*

APPELLANT'S APPENDIX

DAVID SEGAL
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(212) 943-5668



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DOCKET ENTRIES

ARREST or		INDICTMENT		ARRAIGNMENT		TRIAL		SENTENCE	
U.S. Custody Begun 3/15/77	High Risk Date	Information ☐ 5-13-77	Indict. Waived ☐	1st Plea 5-19-77	Final Plea 5-19-77	Voir Dire ☐	Disposition of Charges	☐ Convicted	☐ On All Charges
Summons Served	In Charging District	Superseding Indict/Info ☒ 5-11-77		☒ NG ☐ G ☐ NOL	☐ G Plea ☐ W Drawn	Trial Began ☐	☐ Acquitted	☐ On Lesser Offense(s)	
First Appearance						Trial Ended ☐	☐ Dismissed	☐ WOP: ☐	☐ On Government's Motion

SEARCH WARRANT	ISSUED	RETURN	DATE	INITIAL NO.	CHARGE	DISPOSITION
☐	☐	☐	3/16/77	S.S.-08AE	21 USC 812,841(a)(1),841(b)(1)(A) and 846 - NARCOTICS	☐ DISMISSED
☐	☐	☐	3/25/77	S.S.-08AE		☐ DISMISSED

Patricia Anne Williams
791-1928

Melvin B. Medvin
15 Park Row, N.Y.C. 10038
WO 2-5217

WILLIAMS, HOWELL

3/16/77 Complaint filed, represented by Melvin Medvin, 15 Park Row, N.Y. Defendant remanded into the custody of U.S. Marshal in lieu of \$10,000 PRB secured with \$1,000 cash.

3/17/77 Defendant released on bail, address: 307 W. 113th St., N.Y. Depositor: Regina Tinsley, address: 1252 No. Myrtlewood St., Philadelphia, Pa.

5-13-77 INDICTMENT FILED, 77 CR 368Knapp,J.

5-19-77 Deft. (atty. Melvin Medvin present) pleads not guilty. Bail \$10,000 PRB secured by \$1,000 cash with pre-trial services supervision continued. Case assigned to Bonsal,J. for all purposes.....Stewart,J.

05-25-77 Pre Trial hearing held. 7/18/77 set for trial.

7-11-77 Filed Superseding Indictment & referred to Bonsal,J.Ward,J.

07-12-77 Filed Govt.'s notice of readiness for trial.

07-18-77 Pre-trial conf. held. 9-26-77 set for trial.

09-26-77 Filed Govt's requested Voir Dire questions of prospective jurors.

09-26-77 Filed Govt's requests to charge.

2 5-25 E 1

2 7-18 E

9-21-77 Filed Govt's affdvt for writ of h/c ad 1. Affdvt. issued ret. 9/22/77.

09-26-77 Trial begun with jury before Judge Bonsal.

09-27-77 Trial cont'd.

09-29-77 Trial cont'd. Both sides rest. Ct. 1 dismissed. Summations by counsel. Charge by the Court. Bonsal, J.

09-30-77 Trial cont'd. & concluded. Deft. found guilty on cts. -2 & 3. 11-9-77 set for sent. P.S.I. ordered. Deft. remanded. Bonsal, J.

10-05-77 Motion for bail pending sentence denied. Bonsal, J.

11-09-77 Filed JUDGMENT (atty. David Segal) cts. 2 & 3: 8 yrs. impr. ca. ct. conc. 6 yrs. SP 21:841. Deft. to receive credit for time served. Bonsal, J. issued all copies.

11-15-77 Filed notice of appeal from judgment of 11-9-77. Mailed copies to atty & U.S. Atty.

11-21-77 Filed transcript of record of proceedings dated, 9/26-30/77 & 11-9-77.

INDICTMENT

3a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -x

UNITED STATES OF AMERICA,

-v-

HAROLD WOODFORD
a/k/a "Harold Kilpatrick",

Defendant.

----- -x

INDICTMENT

S 77 Cr. 368

COUNT ONE

The Grand Jury charges:

1. From on or about the 1st day of January, 1977, and continuously thereafter up to and including the 15th day of March, 1977, in the Southern District of New York, HAROLD WOODFORD a/k/a "Harold Kilpatrick", the defendant and LUCILLE WILLIAMS and HERMAN HOWELL, a/k/a "Bubbie", named herein as co-conspirators but not named as defendants, and others to the Grand Jury unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.
2. It was part of said conspiracy that the said defendant and his co-conspirators unlawfully, intentionally and knowingly would and did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, the exact amount thereof being to the Grand Jury unknown, in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

Cent 1 - Received 29 Sept 77 / Cts own motion

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about January 18, 1977, the defendant, — HAROLD WOODFORD a/k/a "Harold Kilpatrick" gave approximately two ounces of heroin to LUCILLE WILLIAMS in exchange for \$1500.
2. On or about January 18, 1977, HERMAN HOWELL, — a/k/a "Bubbie" and LUCILLE WILLIAMS sold approximately two ounces of heroin for \$1,500 in the vicinity of West 113th Street between Eighth and Manhattan Avenues, New York, New York.
3. On or about January 25, 1977, the defendant — HAROLD WOODFORD, a/k/a "Harold Kilpatrick" had a telephone conversation in which he agreed to sell approximately four ounces of heroin.
4. On or about January 26, 1977, the defendant — LUCILLE WILLIAMS sold approximately four ounces of heroin for \$6,400 in the vicinity of West 113th Street between Eighth and Manhattan Avenues, New York, New York.
5. On or about March 15, 1977, the defendant HAROLD WOODFORD, a/k/a "Harold Kilpatrick" had a telephone conversation in which he agreed to sell approximately ten ounces of heroin.

(Title 21, United States Code, Section 846.)

COUNT TWO

The Grand Jury further charges:

On or about the 18th day of January, 1977, in the Southern District of New York, HAROLD WOODFORD, a/k/a "Harold Kilpatrick", the defendant unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 69.75 grams of heroin hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

COUNT THREE

The Grand Jury further charges:

On or about the 26th day of January, 1977, in the Southern District of New York, HAROLD WOODFORD, a/k/a "Harold Kilpatrick", the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 136.03 grams of heroin hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1), and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

FOREMAN

ROBERT B. FISKE, JR.
United States Attorney

CHARGE OF THE COURT

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CHARGE OF THE COURT

(Bonsal, J.)

THE COURT: Mr. Foreman, or Mr. Boatswain,
and ladies and gentlemen of the jury:

First of all, I want to thank each and every
one of you for the care and attention you have shown
throughout this short trial. I want to tell you that
I appreciate the sacrifices that I know each of you has
had to make in your own personal lives so that you could
serve in this very important capacity of being on a
federal jury. I am sure that you are going to bear
with me and give me the same degree of attention that
you have shown throughout the trial so that you may under-
stand the principles of law that apply here.

Now, as you approach your duties as jurors,
remember, as I told you at the outset, that you must
weigh the evidence here calmly and dispassionately,
without any sympathy, without any prejudice for or against
either the government or this defendant.

I told you at the outset that everyone appear-
ing before this bar of justice is entitled to an ab-
solutely fair and impartial trial. I also told you
at the time you were selected the subject matter of
this trial involved narcotics, indeed, heroin. I

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2 told you at that time that this must not create any
3 possible bias or prejudice in determining this case,
4 and each of you promised me that it would not.

5 On the other hand, ladies and gentlemen, you
6 must remember the narcotics traffic is characterized by con-
7 cealment and guile. If narcotic agents went out with badges
8 to apprehend offenders, they wouldn't get anywhere.
9 So here the government must necessarily use undercover
10 agents, informants. As much as you might not like it,
11 they have to use them. They have to take tape record-
12 ings and that kind of thing if they are going to catch
13 anyone.

14 Now, I told you also that your verdict here
15 must be made solely on the testimony that you heard from
16 that witness stand and on the exhibits which have been
17 received and on nothing else at all.

18 I told you also when you were selected that
19 it was my function to set forth the rules of law
20 which apply here, and on that you must accept my in-
21 structions. But, on the other hand, you, the jury,
22 are the sole judges of the facts. It is not what a
23 lawyer says a witness testifies to or what a document
24 contains or shows or what I may say on these subjects;
25 it is what you, the jury, decide.

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2 I also told you at the outset that during
3 the course of the trial I would have conversations with
4 one or the other of the lawyers. Indeed, I did. I
5 told you then, and I repeat now, pay no attention to
6 these conversations. Above all, ladies and gentle-
7 men, draw no inference from anything I may have said
8 during this trial which might lead you to believe that
9 I favor one side or the other here. Of course I do
10 not. That is not my province, that is yours.

11 Now, throughout my charge, ladies and gentle-
12 men, I will instruct you that you may not convict this de-
13 fendant unless and until you are satisfied that the
14 government has proven each element of the crimes charged
15 beyond a reasonable doubt. What do we mean by that
16 expression, beyond a reasonable doubt?

17 Of course, the words themselves suggest the
18 answer. It is a doubt based on reason. It is a doubt
19 which a reasonable man or woman might entertain. A
20 reasonable doubt is not an imaginative one. It is
21 not a doubt that a juror might conjure up to avoid per-
22 forming an unpleasant task. It is a reasonable doubt.
23 It is a doubt which arises in a juror's mind because
24 of something in the evidence, or perhaps the lack of
25 evidence in the case. It is the kind of doubt which

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2 would cause a reasonable man or woman, in the more
3 serious and important matters in his or her life, to
4 hesitate to act.

5 The burden is on the government to prove the
6 guilt of this defendant beyond a reasonable doubt. The
7 government need not prove the defendant's guilt beyond
8 all possible doubt. If that were the rule, few people,
9 however guilty they might be, would ever be convicted.
10 In this world of ours it is practically impossible for
11 one to be absolutely and completely convinced of any
12 controverted fact, which by its nature is not susceptible
13 of mathematical certainty. The law provides that the
14 government must prove the guilt of the defendant beyond
15 a reasonable doubt, not beyond all possible doubt.

16 When I review the indictment with you, I
17 remind you again, as I did at the outset, that the indict-
18 ment is merely the way the government calls into court
19 individuals who it claims has violated the law, I
20 told you then that the indictment is not any evidence
21 of the guilt of this defendant. The indictment cannot
22 overrule by the presumption of innocence with which
23 the law surrounds this defendant until his guilt is
24 proven. This presumption of innocence remains with
25 this defendant throughout the trial and it applies to

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your consideration of each of the essential elements of the crimes charged. As I told you before, this presumption of innocence remains unless and until the jury shall determine that the government has proved the guilt of the defendant as charged.

The defendant here has pled not guilty and in doing so he has put in issue every material element of the government's charges. The government, as I have told you, has to prove each element beyond a reasonable doubt, and this burden remains on the government throughout the trial and if it has not proved to you the defendant is guilty beyond a reasonable doubt, then of course it is your duty to find the defendant not guilty.

There are two counts here in the indictment that you will consider, and a separate crime is charged in each of these two counts. Each of the counts and the evidence pertaining to those counts must be considered by you. The fact that you may find the defendant guilty or not guilty on one of these counts does not in any way control your verdict on the other.

This has been a relatively short trial, ladies and gentlemen. I am not going to review all the evidence with you. You heard the lawyers review it with you in considerable detail just a few minutes ago; I am

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not going to review it again.

It might be helpful to you if I mention what I understand to be some of the contentions here, but that is not conclusive. I am doing it in the hope that it may help you in your own recollection.

As I understand it here, really there are two different crimes charged and they are reflected in the two counts. The first is what occurred on January 18, 1977, where, as I recall it, Lucille Williams testified that she had telephoned the defendant Woodford, who she knew as Harold Kilpatrick, to provide two ounces of heroin for a friend of Herman Howell who is called Bob; that she and Bob and Herman Howell went to West 113th Street, the vicinity of West 113th Street, between Eighth and Manhattan Avenues, where the defendant's office is located. She paid the defendant the sum of money -- you heard the testimony; I don't remember the exact amount -- and got from him two ounces of heroin, which she then delivered to Bob.

Then the second count is on January 25th or 26th, the 26th, again Lucille Williams testified that she called, telephoned the defendant, and wanted four ounces of heroin for Bob, and that on that day Lucille Williams went with Bob to the same area -- I think that

rsall5

was the time in the gypsy cab, if I recall it correctly -- and again Lucille Williams went into the defendant's office and bought the heroin from the defendant with a sum of money.

I think her testimony was that on this first occasion she received a spoon, is the expression, for herself, and on the second occasion I think she received an extra ounce for herself.

Of course the defendant, Mr. Woodford, denies these contentions. He denies that he sold Lucille Williams any heroin, and that her appearance in his office was due to the fact that her common-law husband was one of his employees.

The statute involved here, ladies and gentlemen, is Section 841, Title 21, of the U. S. Code, which provides, to the extent here relevant: "It shall be unlawful for any person knowingly or intentionally to distribute or possess with intent to distribute a controlled substance."

To short-cut all this, heroin is a controlled substance as those words are used in the statute.

You will remember, with regard to the exhibits here, which were Exhibits 2 and 3, the defendant stipulated with the government that those packages con-

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2 tained heroin, but, of course, the defendant did not
3 concede at all and denies that he had anything to do
4 at all with the packages.

5 Turning to the indictment, ladies and gentlemen,
6 and I remind you again that the indictment is merely
7 a charge and not evidence, the first count of the indict-
8 ment which you will consider reads that "on or about
9 the 18th day of January, 1977, in the Southern District of
10 New York"-- all these places, like 113th Street, they
11 are in the Southern District of New York -- "Harold Wood-
12 ford, also known as Harold Kilpatrick, the defendant,
13 unlawfully and intentionally and knowingly did distribute
14 and possess with intent to distribute a Schedule I nar-
15 cotic drug controlled substance, to wit, approximately
16 69.75 grams of heroin hydrochloride, " and that packages,
17 as I recall it, is Exhibit 2.

18 The second count, which relates to January
19 26th, reads in like measure, that "on or about the 26th
20 day of January, 1977, in the Southern District of New
21 York, Harold Woodford, also known as Harold Kilpatrick,
22 the defendant, unlawfully, intentionally and knowingly
23 did possess with intent to distribute a Schedule I narcotic
24 drug controlled substance, to wit, approximately 136.03
25 grams of heroin hydrochloride."

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As I recall it, the package on the 26th was Exhibit 3. I mentioned to you, ladies and gentlemen, consider each of these counts separately, one relating to January 18th and one relating to January 26th, and the evidence that relates to those counts. Reach a separate verdict on each of them.

To find the defendant guilty under either of these counts the government must prove three elements. It must prove each of these elements beyond a reasonable doubt:

First, that the defendant, Mr. Woodford, did distribute or possess with intent to distribute heroin on January 18th or on January 26th, as the case may be. This is very much disputed. Here the government has the burden of proof.

Secondly, that the defendant at these times was acting unlawfully, intentionally and knowingly, that the defendant knew what he was doing. I will talk to you about that further a little later.

Third, the contents of the packages on these occasions included heroin.

I have covered that with you before and you will remember the stipulations of the parties.

The statute speaks of distribution. Well,

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what does distribute mean? The indictment also speaks of that. All that means is passing the heroin from one person to another. It could be a sale, it could be a gift, any transfer would be a distribution.

And then the statute speaks of possessing with intent to distribute. What does possession mean? Well, if you have a package in your hand, that is possession all right. Or if you have not got it in your hand but you can point it out to somebody and say, "There it is," you know where it is, that is known in the law as constructive possession.

So you will see from all this language that one essential element which the Government must prove is: Mr. Woodford's knowledge and intentions on these two occasions. Did he knowingly, intentionally, and unlawfully distribute a narcotic drug.

How do you determine that? Of course, an act is done knowingly and intentionally if it is done voluntarily and purposefully. An act is done intentionally, knowingly and unlawfully if it is done for the purpose of violating the laws, such as selling the narcotic drug. But an act is not done intentionally, knowingly or wilfully if it is done by mistake or by carelessness or by any other innocent reason.

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Of course, it is impossible to know exactly or prove what the defendant had in his mind on these occasions. You can't look into his mind to see what his knowledge was and determine his specific intentions. But these are matters which the jury must determine or make from a careful consideration of the facts and circumstances that were brought out during the trial.

The knowledge and intent of the defendant may only be understood when put in the context of these circumstances, and the inferences which you, the jury, find can reasonably be drawn therefrom. You might ask yourself whether these transactions were normal or abnormal, whether they were open or surreptitious, whether you think the background of the defendant made it likely or unlikely that he understood what he was doing, whether you think he had any motive, such as a financial motive, in bringing them about.

These are the kinds of questions, ladies and gentlemen, of dourse not the only ones, that you should ask yourself to determine the knowledge and intentions of the defendant here. Of course, I don't suggest any answers to any of these questions. Nor are they the only ones that you will ask yourself. In your own daily lives you are continually called upon to use your own

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2 common sense, your own experience, to determine from
3 the actions or statements of others what their real
4 intentions and purposes are. Please do exactly the
5 same thing here.

6 There was a lot of evidence and I think counsel
7 commented on that during the summations, a lot of evidence
8 introduced here that is not directly related to the
9 January 18th and January 26th transactions. These
10 other items do not represent charges being made here
11 by the government. For example, as I recall it, Agent
12 Filmore said that when they arrested the defendant, I
13 think that was on March 15th, they found something
14 in his boot, some cocaine or something like that.

15 Then remember they searched a building on
16 113th Street, and I think that was in the middle of
17 February, I think it was February 15th, and they found
18 some of these plastic bags in there that counsel had
19 been talking to you about, which plastic bags contained
20 narcotics, and they also found I think what they called
21 paraphernalia, which I take it is the spoon and other
22 things used for mixing narcotics. If you find that
23 all these matters have been proven to you, if you
24 believe this evidence, that has nothing to do with your
25 finding of guilt or innocence but it does definitely

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have a bearing on defendant's knowledge and intent at the time of the January 18th and 26th transactions.

The same thing would apply I think to that telephone book, I guess it was an address book, the private telephone directory, maybe that is what it was, you remember that, which I believe the evidence indicates was taken from the defendant at the time of his arrest and which contained an item of "Lucille."

There was other evidence about other transactions involving the defendant in the past -- March 15-- I think there was a conviction certificate read to you, and, there was a defendant's own testimony about prior narcotics matters. All of this relates to knowledge and intent: he is not being charged with any of these things here.

Also, in considering the evidence, ladies and gentlemen, bear in mind that the law recognizes two types of evidence, direct evidence and circumstantial evidence.

Direct evidence is the testimony of a witness who testifies what he saw and what he did.

Circumstantial evidence consists of circumstances brought out from which the jury, by a process of reasoning may find certain facts to have been established

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2 as true. The classic example of circumstantial
3 evidence -- last week was a good time to do it, when
4 it was pouring rain all the time. You went home one
5 afternoon last week and you went into your house or your
6 apartment and somebody was in there looking at television,
7 and they looked at you and you had a wet hat and a wet
8 raincoat. They would look at you and say, "Gee, it's
9 raining outside." They hadn't looked outside but by
10 looking at you and a process of reasoning, they concluded
11 that it was raining outside. That is circumstantial
12 evidence.

13 There is quite a lot of circumstantial evi-
14 dence in this case. You remember the evidence about
15 the agents and the people going to and fro and what not
16 and all the things that were going on. Circumstantial
17 evidence is good evidence as is direct evidence. No
18 greater degree of certainty is required when it is
19 circumstantial than when it is direct.

20 Whether it is direct or circumstantial or both,
21 the government must convince you beyond a reasonable
22 doubt of the defendant's guilt.

23 Of course, different inferences may be
24 drawn from the evidence whether it is direct or circum-
25 stantial, and that's true here. The government may ask

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2 you to draw one set of inferences, while the defendant
3 asks you to draw another. It is you, the jury, alone
4 who will decide what inferences you will draw from the
5 evidence and what facts you find to have been proven.

6 Now, you heard several witnesses during the
7 trial, some for the government and some for the defendant,
8 and of course you, the jury, are the exclusive judges
9 of the credibility of these witnesses.

10 How do you determine their credibility?
11 Of course, you apply exactly the same standards whether
12 they are called by the government or whether they were
13 called by the defendant. Of course, it is the
14 quality, not the quantity of the evidence that is important
15 to your determination.

16 Here, again, in determining credibility, ladies
17 and gentlemen, please use your common, everyday common
18 sense. How did they impress you? Did you think
19 that they testified frankly and candidly and fairly? So
20 apply your common sense and experience just as you do
21 in determining an important matter in your own lives
22 when you have to decide whether you have been given
23 the true picture of a given situation.

24 I think you should consider a witness' demeanor,
25 his background, occupation or business, his prior

1 rsal24

2 criminal record if he has any. You consider his
3 possible bias, his means of information, his recollection.
4 You consider whether you think a witness' testimony is
5 supported or whether you think it is contradicted by
6 other testimony that you find to be credible. You
7 consider whether a witness has an interest in testify-
8 ing in the case.

9 Sometimes if a witness has an interest it
10 may be a temptation for him to color his testimony.
11 I heard a number of government agents during the course
12 of the trial. They have an interest, of course, and
13 their interest is to prosecute people whom they think
14 have violated the law. But of course that doesn't
15 mean that a witness who has an interest will color his
16 testimony or falsify it to you, it is merely something,
17 a factor, which you may consider.

18 The defendant, Mr. Woodford, he testified
19 during the trial. He did so voluntarily. He didn't
20 have to testify, he did that voluntarily. Manifestly,
21 he has a vital interest in the outcome of this case.
22 His interest is certainly something you must consider care-
23 fully along with the other circumstances in determining
24 the credibility that you give to his testimony. Of
25 course, here, again, you can conclude that the de-

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2 fendant was telling the complete truth despite his
3 interest.

4 Then we had Lucille Williams, who had been
5 talked about a great deal during the trial and the summa-
6 tions. She was really an accomplice here. You
7 remember she testified that she pled guilty, she
8 was awaiting sentence.

9 Also, there was testimony indicating I think --
10 and I think defense counsel -- brought that out -- that
11 Ms. Williams was rather spiteful about the defendant.
12 Some of these things were brought out in the trial.

13 These things you must consider carefully. Her
14 testimony here is sufficient to convict the defendant
15 if you believe it. But you must consider her testi-
16 mony very carefully and consider whether or not you find
17 it to be corroborated by the other evidence in the
18 case. And bear in mind in considering her testimony,
19 take into account any motive that you find she may
20 have, including the spite that I have mentioned, in-
21 cluding perhaps hoping for leniency in her sentence.
22 Subject her testimony to very close and careful scrutiny.

23 A witness may be discredited or impeached by
24 evidence that at other times the witness made statements
25 inconsistent with the present testimony, or that there was

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2 contradictory evidence, some of that came out during
3 the trial too.

4 If you find that a witness is lying to you,
5 you may disregard all of that witness' testimony if you
6 want to. You can accept part of it if you find it
7 reliable, and you can disregard the rest.

8 I think I told you, ladies and gentlemen, you
9 should consider each of the counts separately and I
10 repeat that again. Whether your verdict is one way
11 or the other on one count, it does not control the
12 verdict on the other count.

13 You have a right to see any of the exhibits
14 that have been received during the course of the trial.
15 If you want to see any of them, just let me know by
16 telling the marshal.

17 As you deliberate, ladies and gentlemen,
18 remember that a jury deliberation is one which everyone
19 participates in, especially when exchanging their views.
20 Don't be afraid to change your original view because
21 of pride or stubbornness or any other reason should you
22 become convinced that your original view was wrong. On
23 the other hand, ladies and gentlemen, never surrender
24 your honest conviction because you are outvoted or because
25 of anybody else's view, never surrender your honest conviction.

1 tsal27

2 tion. You seek to reach a verdict here, provided
3 you can do this reasonably and consistently, with a
4 conscientious conviction of all 12 of you.

5 It's important -- I think counsel mentioned
6 this -- of course to the government and this defendant
7 that this case be decided by you.

8 Of course, this being a criminal case, the
9 verdict must be unanimous, the verdict representing
10 the conscientious convictions of each of you.

11 If you should find after a careful considera-
12 tion of the evidence here that the defendant is not
13 guilty, you must not hesitate for any reason to bring
14 in a verdict of not guilty.

15 On the other hand, if you find after con-
16 sidering all of the evidence that the law has been violated
17 by this defendant, you must not hesitate to render a
18 verdict of guilty because of sympathy or any other reason
19 at all.

20 Please don't consider the matter of punishment
21 in case you should find the defendant guilty. The
22 matter of punishment is a matter that has to be decided
23 by the court and it must not enter into your delibera-
24 tions in any way. It must not affect you or make
25 any of you seek to avoid performance of an unpleasant

1 rsal28

2 task.

3 In conclusion, ladies and gentlemen, I am
4 sure that if each of you expresses your views or listens
5 to the views of your fellow jurors and apply your
6 common sense, you will reach a fair verdict in this case.
7 Remember, as I have told you, your verdict must be rendered
8 without favor or fear, and without prejudice and without
9 sympathy.

10 Counsel come forward, please.

11 (At the side bar.)

12 THE COURT: All right; exceptions?

13 MR. MEDVIN: None, your Honor.

14 MS. WILLIAMS: Admissions of the defendant
15 and the use of the false name.

16 THE COURT: I don't think that is necessary.
17 I think there is plenty without that. All right.
18 Thank you.

19 MR. MEDVIN: Thank you, your Honor.

20 THE COURT: Mr. Jackson, it is my privilege
21 to excuse you now, sir, and to thank you very much for
22 sitting with us during this trial. You know, if any
23 of your fellows had fallen by the wayside, we would have
24 been in terrible shape without you. I appreciate
25 your being with us and I hope you may have found it an

1 rsal29

2 interesting experience.

3 THE CLERK: Would you report back to the
4 central jury part on the first floor. They will
5 give you your instructions for tomorrow.

6 THE COURT: Thank you very much, Mr. Jackson.
7 Good luck to you.

8 ALTERNATE JUROR: You are welcome, your
9 Honor. I found it very interesting.

10 (Marshal duly sworn.

11 THE COURT: All right, ladies and gentle-
12 men. Remember there are two counts, January 18th
13 and January 26th. The verdict will be guilty or not
14 guilty.

15 Thank you very much.

16 (The jury left the courtroom to commence
17 deliberating at 3:15 p.m.)

18 THE COURT: I wonder about the exhibits.
19 There are not that many. Did you have an exhibit?

20 MR. MEDVIN: No, sir.

21 THE COURT: It's just the government's exhibits.
22 If the jury wants to see any of these exhibits, you can
23 send them in without my having to come all the way down-
24 stairs.

25 MS. WILLIAMS: I believe the reporter will

1 rsal30

2 be here in that event. If that is your wish, we will
3 do so.

4 THE COURT: Yes. If there is any problem,
5 I will come down. I want to have them ready. I think
6 I mentioned 2 and 3. I don't think that they will
7 probably want to see them.

8 MR. MEDVIN: If your Honor please, do you
9 know what time you will order the jury to be held over?

10 THE COURT: No. I just want to see how
11 things go. It's a quarter past 3 now. I would
12 think -- let's see how they get along. Maybe I will
13 come down around 5 or half past 5 and consult with you.

14 MS. WILLIAMS: Your Honor, most of the
15 government's exhibits, 2, 3 and 8 and 5, are narcotics,
16 and our difficulty in having them in the jury room is
17 that we cannot do that.

18 THE COURT: I have never heard them ask
19 for it. I would be surprised if they do this time.
20 If they do want to see them, I will have them out in
21 the courtroom and they can look at them then.

22 MS. WILLIAMS: Thank you, your Honor.

23 THE COURT: All right. We stand in recess
24 then.

25 (Recess taken at 3:15 p.m.)

JUDGMENT AND COMMITMENT

DEFENDANT

Harold Kilpatrick

DOCKET NO. S77 Cr. 368

JUDGMENT AND PROBATION/COMMITMENT ORDER

AQ-245 (6-7)

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
11	9	'77

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

David Segal

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,☐ NOLO CONTENDERE,☒ NOT GUILTYThere being a ~~verdict~~/verdict of☐ NOT GUILTY. Defendant is discharged☒ GUILTY.

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of unlawfully, intentionally and knowingly did distribute and possess with intent to distribute heroin I. (Title 21, U.S. Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, U.S. Code, Section 2.)

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SENTENCE
OR
PROBATION
ORDER

EIGHT (8) YEARS on each of counts 2 and 3, to run concurrently with each other.

Pursuant to Section 841 of Title 21, U.S. Code, defendant is placed on Special Parole for a period of SIX (6) YEARS, to commence upon expiration of confinement.

Defendant is to receive credit for time already served.

SPECIAL
CONDITIONS
OF
PROBATION

remanded.

**ADDITIONAL
CONDITIONS
OF
PROBATION**

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant of arrest for a violation occurring during the probation period.

**COMMITMENT
RECOMMEN-
DATION**

The Court orders commitment to the custody of the Attorney General and recommends,

MICROFILM

NOV 14 1977

It is ordered that the Clerk
a certified copy of this
and commitment to the
custody of the Attorney General

SIGNED BY

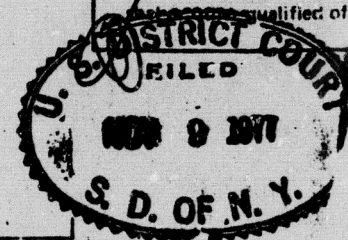
☒ U.S. District Judge

☐ U.S. Marshal

Dudley B. Bonsal

Dudley B. Bonsal Date 11-9-77

6



SEGAL

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 17 day of April, 1978 at No. 1 St. Andrews Pl., NYC

deponent served the within *Appeal*
upon U.S. Atty., So. Dist. of NY

the Appellee herein, by delivering / true
copy(ies) thereof to him personally. Deponent knew the person so
served to be the person mentioned and described in said papers as the
Appellee therein.

Sworn to before me this
17 day of April 1978.

Edward Bailey
Edward Bailey

William Bailey
WILLIAM BAILEY
Notary Public, State of New York
No. 43-4661518
Qual. in Richmond County
Commission Expires March 30, 1979